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GOVERNMENT OF KERALA

Food (C) Department

NOTIFICATION

No. 11180/C1/74/Food. *Dated, Trivandrum, 30th July 1974.*

The following Essential Commodities (Amendment) Ordinance, 1974 (2 of 1974) dated the 22nd June, 1974 of the Government of India, Ministry of Law, Justice and Company Affairs (Legislative Department) Published in the Gazette of India Extraordinary, Part II, Section I, dated the 22nd June, 1974 is hereby republished for general information.

By order of the Governor,

P. M. ABRAHAM,

Special Secretary.

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THE ESSENTIAL COMMODITIES (AMENDMENT) ORDINANCE, 1974

(No. 2 OF 1974)

Promulgated by the President in the Twenty-Fifth Year of the Republic of India.

An Ordinance further to amend the Essential Commodities Act, 1955.

Whereas Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:—

1. *Short title and commencement.*—(1) This Ordinance may be called the Essential Commodities (Amendment) Ordinance, 1974.

(2) It shall come into force at once.

2. *Act 10 of 1955 and Act 46 of 1952 to be temporarily Amended.*—During the period of operation of this Ordinance, the Essential Commodities Act, 1955 (hereinafter referred to as the principal Act) shall have effect subject to the amendments specified in sections 3 to 12 (both inclusive) and the Criminal Law Amendment Act, 1952 shall have effect subject to the amendments specified in section 13.

3. *Amendment of Section 2.*—In section 2 of the principal Act, in clause (a), after sub-clause (iv), the following sub-clause and Explanation shall be inserted, namely:—

'(iva) drugs

Explanation.—In this sub-clause, "drug" has the meaning assigned to it in clause (b) of Section 3 of the Drugs and Cosmetics Act, 1940 (23 of 1940).

4. *Amendment of section 3.*—In section 3 of the principal Act, in clause (ii) of sub-section (3B), for the words "where no such price is fixed," the words "where no such price is fixed, an amount calculated having regard to" shall be substituted.

5. *Amendment of Section 6A.*—In section 6A of the principal Act, in the opening paragraph, for the words "may order confiscation

of the essential commodity so seized:", the following shall be substituted, namely:—

"may order confiscation of—

(a) the essential commodity so seized;

(b) any package, covering or receptacle in which such essential commodity is found; and

(c) any animal vehicle, vessel or other conveyance used in carrying such essential commodity:"

6. *Amendment of section 6B.*—Section 6B of the principal Act shall be re-numbered as sub-section (1) thereof and—

(a) in sub-section (1) as so re-numbered, for the words, "essential commodity", wherever they occur, the words, "essential commodity, Package, covering, receptacle, animal, vehicle, vessel or other conveyance" shall be substituted;

(b) after sub-section (i) as so re-numbered, the following sub-section shall be inserted namely:—

"(2) Without prejudice to the provisions of sub-section (i), no order confiscating any animal, vehicle, vessel or other conveyance shall be made under section 6A if the owner of the animal, vehicle, vessel or other conveyance proves to the satisfaction of the Collector that it was used in carrying the essential commodity, without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the animal, vehicle, vessel or other conveyance and that each of them had taken all reasonable and necessary precautions against such use".

7. *Amendment of section 7.*—In section 7 of the principal Act, for sub-sections (i) and (2), the following sub-sections shall be substituted namely:—

"(1) If any person contravenes any order made under section 3.—

(a) he shall be punishable,—

(i) in the case of an order made with reference to clause (h) or clause (i) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months;

(b) any property in respect of which the order has been contravened shall be forfeited to the Government;

(c) any package, covering or receptacle in which the property is found and any animal, vehicle, vessel or other conveyance used in carrying the property shall, if the court so orders, be forfeited to the Government.

(2) If any person to whom a direction is given under clause (b) of sub-section (4) of section 3 fails to comply with the direction, he shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months.

(2A) If any person convicted of an offence under sub-clause (ii) of clause (a) of sub-section (i) or under sub-section (2) is again convicted of an offence under the same provision, he shall be punishable with imprisonment for the second and for every subsequent offence for a term which shall not be less than six months but which may extend to seven years and shall also be liable to fine:

Provided that the court may, for any adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than six months.

(2B) For the purposes of sub-sections (1), (2) and (2A) the fact that an offence under sub-clause (ii) of clause (a) of sub-section (i) or under sub-section (2) has caused no substantial harm to the general public or to any individual shall be an adequate and special reasons for awarding a sentence of imprisonment for a term of less than three months or six months, as the case may be".

8. *Amendment of section 10A.*—In section 10A of the principal Act,—

(a) for the words and figures "the Code of Criminal Procedure, 1898 (5 of 1898)" the words and figures "the Code of Criminal Procedure, 1973 (2 of 1974)" shall be substituted;

(b) the words "and bailable" shall be omitted.

9. *Insertion of new sections 10B and 10C.*—After section 10A of the principal Act, the following sections shall be inserted, namely:—

'10B. *Power of court to publish name place of business etc., of companies, convicted under the Act.*—(1) Where any company is convicted under this Act, it shall be competent for the court convicting the company to cause the name and place of business of the company, nature of the contravention, the fact that the

company has been so convicted and such other particulars as the court may consider to be appropriate in the circumstances of the case, to be published at the expense of the company in such newspapers or in such other manner as the court may direct.

(2) No publication under sub-section (1) shall be made until the period for preferring an appeal against the orders of the court has expired without any appeal having been preferred, or such an appeal, having been preferred, has been disposed of.

(3) The expenses of any publication under sub-section (i) shall be recoverable from the company as if it were a fine imposed by the court.

Explanation.—For the purposes of this section "company" has the meaning assigned to it in clause (a) of the Explanation to section 10.

10C. *Presumption of culpable mental state.*—(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believe it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

10. *Substitution of new section for section 12.*—For section 12 of the principal Act, the following section shall be substituted, namely:—

"12. *Special provision regarding fine.*—Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Metropolitan Magistrate, or any Judicial Magistrate of the first class specially empowered by the State Government in this behalf, to pass a sentence of fine exceeding five thousand rupees on any person convicted of contravening any order made under section 3".

11. *Amendment of section 12A.*—In section 12A of the principal Act.—

(a) in sub-section (1), for the words "any essential commodity", the words, brackets, letter and figure "any essential commodity

[not being an essential commodity referred to in clause (a) of sub-section (2)]" shall be substituted:

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Notwithstanding anything contained in the Code of Criminal procedure, 1973 (2 of 1974), all offences relating to—

(a) the contravention of an order made under section 3 with respect to—

(i) cotton or wollen textiles, or

(ii) foodstuffs, including edible oilseeds and oils, or

(iii) drugs; and

(b) where any notification issued under sub-section (1) in relation to a special order is in force, the contravention of such special order

shall be tried in a summary way and by a Judicial Magistrate of the first class specially empowered in this behalf by the State Government or by a Metropolitan Magistrate and the provisions of section 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trial:

Provided that, in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall, after hearing the parties, record an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in the manner provided by the said Code".

(c) in sub-section (3).

(i) for the words and figures "the Code of Criminal Procedure, 1898 (5 of 1898)" the words and figures "the Code of Criminal Procedure, 1973 (2 of 1974)" shall be substituted—

(ii) for the words "or of fine not exceeding two thousand rupees or both", the words "and of fine not exceeding two thousand rupees" shall be substituted;

(iii) for the word and figures "section 517", the word and figures "section 452" shall be substituted.

(iv) the words "of imprisonment or fine" shall be omitted.

(d) for sub-section (4), the following sub-section shall be substituted, namely:—

"(4) All cases relating to the contravention of an order referred to in clause (a) of sub-section (2), not being a special order, and pending before a Magistrate immediately before the commencement of the Essential Commodities (Amendment) Ordinance, 1974, and where any notification is issued under sub-section (1) in relation to a special order, all cases relating to the contravention of such special order and pending before a Magistrate immediately before the date of the issue of such notification, shall, if no witnesses have been examined before such commencement or the said date, as the case may be, be tried in a summary way under this section, and if any such case is pending before a Magistrate who is not competent to try the same in a summary way under this section, it shall be forwarded to a Magistrate so competent".

12. *Insertion of new section 12B.*—After section 12A of the Principal Act, the following section shall be inserted, namely:—

"12B. *Grant of injunction, etc., by civil courts.*—No civil court shall grant an injunction or make any order for any other relief against the Central Government or a public officer in respect of any act done or purporting to be done by such Government, or such officer in his official capacity, under this Act or any order made thereunder, until after notice of the application for such injunction or other relief has been given to such Government or officer".

13. *Amendment of Act 46 of 1952.*—In section 8A of the Criminal Law Amendment Act, 1952,—

(a) in sub-section (1)—

(i) for the words, figures and letter "referred to in section 12A of the Essential Commodities Act, 1955", the words, brackets, figures and letters "referred to in sub-section (1) of section 12A of the Essential Commodities Act, 1955 or of an order referred to in clause (a) of sub-section (2) of that section" shall be substituted;

(ii) after the proviso, the following proviso shall be inserted, namely:—

"Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the special Judge that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the special Judge shall after hearing the parties, record

an order to that effect and thereafter recall any witnesses who may have been examined and proceed to hear or re-hear the case in accordance with the procedure prescribed by the said Code for the trial of warrant cases by Magistrates".

(b) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) All cases relating to the contravention of an order referred to in clause (a) of sub-section (2) of section 12A of the Essential Commodities Act, 1955 (10 of 1955) [not being a special order referred to in sub-section (1) of that section] triable summarily under this section and pending before a Magistrate immediately before the commencement of the Essential Commodities (Amendment) Ordinance, 1974, and, where any notification is issued under sub-section (1) of the said section 12A in relation to a special order, all cases triable summarily under this section in relation to such special order and pending before a Magistrate immediately before the date of the issue of such notification, shall, if no witnesses have been examined before such commencement or the said date, as the case may be, be tried by the special Judge in a summary way under this section.

14. *Saving.*—(1) The amendments made by section 11 of this Ordinance to section 12A of the Principal Act shall not apply to and in relation to any contravention of a special order referred to in the said section 12A which was committed before the commencement of this Ordinance and accordingly the provisions of that section as they stood immediately before such commencement shall continue to apply to and in relation to such contravention as if this Ordinance had not been promulgated.

(2) The amendments made by section 173 of this Ordinance to section 8A of the Criminal Law Amendment Act, 1952 (46 of 1952) shall not apply to and in relation to any contravention of a special order referred to in section 12A of the Principal Act which was committed before the commencement of this Ordinance and accordingly the provisions of the said section 8A as they stood immediately before such commencement shall continue to apply to and in relation to such contravention as if this Ordinance had not been promulgated.

V. V. GIRI,
President.

S. K. MAITRA,
Joint Secretary to the Government of India.